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August 11, 2003

Dockets Management System
U.S. Department of Transportation
Room PL-401
400 Seventh Street, SW
Washington, DC 20590-0001

Subject: RSPA-03-15327 (HM-206B) - 10

To Whom It May Concern:

The National Pest Management Association (NPMA) appreciates the opportunity to respond to the notice of proposed rulemaking that appeared in the June 11, 2003 *Federal Register* regarding changes to the hazard communication requirements, including revision of design of labels and placards for materials poisonous by inhalation.

Founded in 1933, NPMA is the only national trade group for companies engaged in the business of managing pests such as ants, cockroaches, spiders, stored product pests, termites, yellow jackets and other stinging insects. Settings in which our members manage pests include single and multi-family housing, office buildings, schools, warehouses, restaurants and numerous other commercial and institutional venues. A large segment of NPMA's membership also treats transport vehicles or freight containers (known in the FR notice as "packages") for pests.

Specifically, NPMA is writing in response to the proposed changes to §173.9, Transport vehicles or freight containers containing lading which has been fumigated. As noted in the *Federal Register* notice, the proposed revisions are in response to a petition from the Industrial Fumigant Company (IFC).

The issues that IFC raised on which NPMA would like to comment include: (1) clarifying the phrase "or treated with any material," so as to avoid compelling fumigators to inappropriately use the FUMIGANT marking when using products other than fumigants to treat a package and (2) allowing for aeration of the vehicle or freight container without requiring the unloading of the lading that has been fumigated.



In declining IFC's request to clarify the phrase "or treated with any material," or to develop different marking requirements for when non-fumigant products are used to "fumigate" packages, RSPA is encouraging fumigators to improperly mark packages, an action that may unnecessarily delay emergency workers' response to an accident. Such a directive is also inconsistent with the spirit if not the specific of §171.2, which requires accurate marking of containers and packages.

Under the U.S. Environment Protection Agency's (EPA) pesticide registration and labeling process, each product is assigned a signal word that is affixed to the label. The words – "Caution," "Warning," and "Danger" – are easily visible, and correlate with EPA's toxicity categories.

EPA's categorizes pesticides in toxicity categories I-IV, with Category I being the most toxic (Danger) and III and IV being the least toxic (Caution). Fumigant products almost always carry the signal word "Danger." The use of a fumigant in a vehicle or other container, of course, also requires the FUMIGANT marking, in accordance with EPA labeling requirements.

Other products periodically used to treat trailers and other packages, however, carry different signal words and thus have different toxicity categories. For instance, as IFC pointed out in its petition, sometimes a total release, ready to use, aerosol insecticide or a "fogger" is used to treat a trailer instead of a fumigant. Many of the ready to use products are pyrethrin-based and - unlike fumigants - carry the "Caution" signal word.

Label instructions on pyrethrin products differ greatly from the instructions on a label of a fumigant. Some pyrethrin fogger labels instruct applicators to "Keep treated area closed for at least two hours. Before reoccupying area, open all doors and windows and allow treated area to air for 30 minutes." Again, however, these instructions differ greatly from that of a fumigant label, and a FUMIGANT marking could mislead emergency workers and hamper their ability to respond to a dangerous situation in a quick and expeditious manner.

According to §173.9(b), a hazard-warning label authorized by EPA may be used as an alternative to the FUMIGANT marking. Very few pesticide labels that permit treating packages specifically authorize the posting of a sign, and EPA regulations do not require such action. After reviewing numerous labels, we could only find one non-fumigant product labeled for treating packages (railcars in this case) that specifically requires the posting of a sign. The product, dichlorvos (DDVP), requires that applicators tape DANGER placards to all door openings. The purchase and use of fogger products containing DDVP is limited to licensed pest control operators. Yet, pyrethrin foggers that are more widely available and arguably less toxic would require a more ominous marking, albeit misleading, under current DOT regulations.

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NPMA respectfully asks that RSPA reconsider its position on this matter, so that applicators are not placed in the position of improperly marking packages intentionally. NPMA would be pleased to work with RSPA to develop a more sensible policy.

Finally, NPMA is pleased that RSPA understands the difficulty involved in requiring fumigators to unload lading and has responded favorably to IFC's request to permit the removal of the FUMIGANT marking if the lading is unloaded or the transport vehicle is sufficiently aerated. Currently, both conditions must be met before the marking may be removed from the package. Modifying §173.9(e)(1) to read "The fumigated lading is unloaded; or" allows fumigators more flexibility without compromising safety. NPMA wholeheartedly supports the proposed rule change and encourages RSPA to move forward.

Again, NPMA appreciates the opportunity to comment. Should RSPA have any questions regarding this letter, please do not hesitate to contact Gene Harrington, NPMA's Manager of Government Affairs, at gharrington@pestworld.org or 703-573-8330.

Sincerely,

A handwritten signature in black ink, appearing to read "Gene Harrington", with a stylized flourish at the end.

Gene Harrington
Manager of Government Affairs